

Message Text

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TO AMEMBASSY BERN PRIORITY

INFO AMCONSUL ZURICH PRIORITY

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E.O. 11652: N/A

TAGS: CFED, SZ

SUBJECT: DEPARTMENT OF JUSTICE REQUEST FOR BANK
DOCUMENT IN GRAND JURY PROCEEDINGS RE JAMES F.
KHAWLY

1. IN NOVEMBER, 1974, THE SWISS EMBASSY INQUIRED WHETHER
CRIMINAL CHARGES IN THE US COULD BE BROUGHT AGAINST JAMES
F. KHAWLY, WHO WAS INVOLVED IN AN ALLEGEDLY FRAUDULENT
SCHEME CONCERNING THE PURCHASE BY BANK WIDEMANN, ZURICH,
SWITZERLAND OF SECURITIES FOR SOME \$235,000 U.S. WHICH
WERE WORTHLESS TO BANK WIDEMANN. THIS TRANSACTION CON-
TRIBUTED TO THE FAILURE OF THAT BANK, WHICH IS NOW
BANKRUPT.

2. THE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT
OF NEW YORK BELIEVES A CRIMINAL CASE MIGHT BE BROUGHT
AGAINST KHAWLY, BUT EVIDENCE PRESENTLY AVAILABLE IS NOT
SUFFICIENT FOR AN INDICTMENT. HE NEEDS ALL DOCUMENTS IN
THE POSSESSION OF BANK WIDEMANN RELATING TO ITS PURCHASE
OF 35,000 SHARES OF CLASS A PREFERRED STOCK OF AFCA, INC.
S.A. IN THE AUTUMN OF 1970. THIS STOCK WAS ORDERED BY
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THEODOR ARNOLD, A FORMER MANAGING DIRECTOR OF BANK

WIDEMANN, FROM MEYERSON CO., JERSEY CITY, NEW JERSEY ON SEPTEMBER 28, 1970. WHEN BANK WIDEMANN DISCOVERED THAT THE STOCK WAS WORTHLESS, IT DEBITED KHAWLY'S ACCOUNT WITH THE ENTIRE AMOUNT, PURSUANT TO HIS INSTRUCTIONS OF DECEMBER 1, 1970. HOWEVER ARNOLD, A FRIEND OF KHAWLY, PERMITTED KHAWLY'S ACCOUNT TO BECOME DELINQUENT OVER THE NEXT YEAR UNTIL IT SHOWED A NEGATIVE BALANCE OF 1.9 MILLION SWISS FRANCS AS OF DECEMBER 22, 1971. IT WAS WITHIN ARNOLD'S POWERS AS A DIRECTOR TO EXTEND UP TO 2 MILLION FRANCS CREDIT WITHOUT COUNTER-SIGNATURE OF ANOTHER DIRECTOR. ARNOLD WAS RELIEVED OF HIS DUTIES AS MANAGER IN MARCH, 1972.

3. LITTLE MORE IS KNOWN BY THE U.S. ATTORNEY AND PRESENT KNOWLEDGE IS BASED ON INADMISSIBLE EVIDENCE, MOSTLY HEARSAY. THE DOCUMENTS REQUIRED SHOULD INCLUDE EVERYTHING POSSIBLY RELEVANT TO THIS TRANSACTION, FROM THE FIRST PIECE OF CORRESPONDENCE MENTIONING IT TO THE LAST DOCUMENT DESCRIBING THIS TRANSACTION, AS A CAUSE FOR ARNOLD'S DISMISSAL. THEY SHOULD INCLUDE, OF COURSE, ALL DOCUMENTS RELATING TO THE TRANSACTION PROPER AND KHAWLY'S ROLE THEREIN, INCLUDING ALL RECORDS OF KHAWLY'S ACCOUNT DATING FROM BEFORE THIS TRANSACTION UNTIL THE 12/22/71 STATEMENT OF HIS ACCOUNT REFLECTING THE NEGATIVE BALANCE OF 1.9 MILLION SWISS FRANCS. OF COURSE IT IS POSSIBLE THAT TRANSACTIONS AFTER THAT DATE MIGHT BE RELEVANT, BUT THE U.S. ATTORNEY HAS NO WAY OF KNOWING THIS. HE THEREFORE REQUESTS ALL RECORDS OF THIS ACCOUNT. LIKEWISE ALL RECORDS RELATING TO THE SECURITIES TRANSACTIONS ARE DESIRED. THEY SHOULD INCLUDE ALL CORRESPONDENCE, INTERNAL BANK MEMORANDA, AND COMPLETE RECORDS OF ALL MONETARY TRANSACTIONS IN ANY WAY CONNECTED TO THIS PURCHASE OF STOCK.

4. ORDINARILY REQUESTS VIA LETTERS ROGATORY ARE MUCH MORE LIMITED IN SCOPE. BUT IN VIEW OF THE FACTS (1) THAT THE BANK IS THE INJURED PARTY AND SHOULD THEREFORE BE FULLY COOPERATIVE, (2) THERE IS AN OUTSTANDING CRIMINAL WARRANT FOR KHAWLY'S ARREST, ISSUED BY THE ZURICH CANTONAL POLICE DECEMBER 7, 1973, AND (3) LIMITED OFFICIAL USE

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THE U.S. DEPARTMENT OF JUSTICE IS UNDERTAKING THE PROSECUTION OF THIS CASE PURELY AT THE BEHEST OF THE SWISS EMBASSY, WE BELIEVE A BROAD REQUEST IS JUSTIFIED.

5. IMMEDIATE ACTION IS REQUIRED BECAUSE THE ALLEGED CRIMINAL ACTS OF KHAWLY TOOK PLACE IN 1970, AND THE 5-YEAR STATUTE OF LIMITATIONS IS ABOUT TO EXPIRE.

ALTHOUGH KHAWLY'S ACTS PROBABLY PREDATE ARNOLD'S PURCHASE ORDER OF SEPTEMBER 28, 1970, IT MAY BE POSSIBLE TO CHARGE HIM IF AN INDICTMENT IS BROUGHT ON OR BEFORE SEPTEMBER 28, 1975.

6. WHEN BANK RECORDS ARE SOUGHT BY THE ORDINARY MEANS OF LETTERS ROGATORY, THE FDJP WAIVES THE CRIMINAL SANCTIONS IN THE SWISS COMMERCIAL SECRECY LAWS TO IMMUNIZE THE BANK FROM PROSECUTION FOR DISCLOSING THE RECORDS. PRESUMABLY THIS IMMUNITY WILL HAVE TO BE GRANTED IN THIS CASE AS WELL, BUT THE SEVERE TIME LIMITATIONS PREVENT THE PREPARATION OF THE NORMAL LETTERS ROGATORY. IF THE FDJP WILL ACT TO ENABLE THE DOCUMENTS TO BE OBTAINED IN TIME TO BE USED IN A GRAND JURY BEFORE SEPTEMBER 28, LETTERS ROGATORY CAN BE PREPARED IN THE MEANTIME, IF THE FDJP SO DESIRES.

7. THE JUSTICE DEPARTMENT ASSURES FDJP THAT ANY DOCUMENTS PRODUCED WILL NOT BE USED EXCEPT IN THE PROSECUTION OF CIVIL OR CRIMINAL COURT ACTION IN CONNECTION WITH CHARGES IN THE NATURE OF FRAUD. IN NO EVENT WILL THE EVIDENCE PRODUCED PURSUANT TO THIS REQUEST BE USED IN PROCEEDINGS OF A FISCAL NATURE.

8. ALTHOUGH THE DOCUMENTS CAN BE PRESENTED IN THE GRAND JURY PROCEEDING WITHOUT AN AUTHENTICATING WITNESS, THEY CANNOT BE INTRODUCED AT TRIAL UNLESS SOMEONE HAVING CUSTODY OF THE BANK'S RECORDS IS WILLING TO TESTIFY IN NEW YORK CITY THAT THE DOCUMENTS WERE KEPT IN THE ORDINARY COURSE OF THE BANK'S BUSINESS AND THAT THE ENTRIES ON SUCH DOCUMENTS WERE MADE AT OR ABOUT THE TIME OF THE OCCURRENCE OF THE TRANSACTIONS THEY RECORD.

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9. FYI: SWISS EMBASSY HERE HAS NOTIFIED GOS OF ABOVE REQUEST. INGERSOLL

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